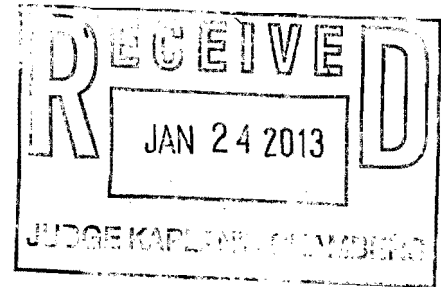
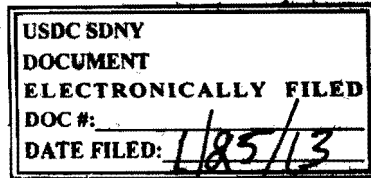


EARTHRIGHTS INTERNATIONAL

DOCKET

January 23, 2013

VIA FEDEX



Hon. Lewis A. Kaplan
United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: *Chevron Corporation v. Donziger et. al.*, Docket No. 11 CV 0691 (LAK)

Dear Judge Kaplan:

Chevron's brief of January 22, 2013 presents an inaccurate and utterly incomplete description of the issues surrounding the subpoena issued to Non-Party Amazon Watch. *See* Dkt. 733 at 4, n.2. On behalf of Non-Party Amazon Watch, I respectfully write to correct the record.

Amazon Watch and Chevron, to be sure, disputed whether AW was validly served on November 28, 2012. But what Chevron failed to tell the Court is that Chevron subsequently agreed that service was effected as of December 7, 2012. Amazon Watch did not seek to "evade" service. Instead, AW expressly told Chevron on December 7 that "Amazon Watch is prepared to accept service as of today. . . . We don't have any interest in wasting resources on service of process fights." Declaration of Marco Simons, Ex. A. Thus, as part of a bargain that allowed both sides to avoid a prolonged dispute over service, Mark Doerr, on behalf of Chevron, and my colleague Marco Simons, agreed over the phone, and confirmed through email, that service was effected as of December 7, 2012. Simons Decl. ¶¶2-5.

Chevron's claim that AW had some sort of incentive to "manufacture" a service dispute is silly. Dkt. 733 at 4, n.2. AW could not predict that Chevron would challenge certain third-party subpoenas as outside this Court's Scheduling Order; Chevron filed the motion for a protective order in which it did so *after* Chevron and AW agreed on December 7 to service as of that date. Dkt 667 at 4, n.8. In ruling on Chevron's motion, this Court held that the Scheduling Order applied to third-party subpoenas, and thus that December 1, 2012 was the final date for serving document requests on third parties. Dkt. 679, at 4 and n. 14, 15 and n. 45. It is to avoid that ruling with respect to *its own* third-party subpoena that Chevron now pretends the December 7 agreement never happened. There is surely "gamesmanship" going on here, but not by Amazon Watch.


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I note that the Court's prior ruling suggests that the issue of when service was effected on Amazon Watch is one the Court will leave to the issuing court to ultimately decide. *See* Dkt. 679 at 7. To resolve that issue, the court that hears it will need to first decide whether Chevron may rescind its express agreement. Even if the Court were to permit Chevron to do so, it must then determine whether service was proper in the first instance. These questions are neither central to the case nor extend beyond the specifics of this particular subpoena, and a ruling is not necessary to insure that general discovery issues will receive uniform treatment. Dkt. 679 at 7. Nonetheless, should the Court choose to rule on the matter, we respectfully request the opportunity to brief these questions.

Sincerely,



Richard Herz

Senior Attorney, EarthRights International

On behalf of Non-Party Amazon Watch

Member of the bar of the State of N.Y. but not the S.D.N.Y.

cc: Randy Mastro (by email)
Tyler G. Doyle (by email)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
CHEVRON CORPORATION,

Plaintiff,

Docket No. 11 CV 0691 (LAK)

v.

STEVEN DONZIGER, et al.,

Defendant.
-----X

DECLARATION OF MARCO SIMONS

Marco Simons
marco@earthrights.org
Richard Herz
rick@earthrights.org
Michelle Harrison
michelle@earthrights.org
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Attorneys for Non-Party Amazon Watch

I, Marco Simons, declare as follows:

1. I am a member of the State Bar of California and the U.S. District Court for the Northern District of California and an attorney with EarthRights International, counsel for Amazon Watch. The facts stated herein are based on my personal knowledge. If called upon to do so could and would competently testify thereto.

2. In early December 2012, I was in discussion with Mark Doerr of Gibson Dunn & Crutcher, counsel for Chevron, regarding the sufficiency of service of this subpoena on Amazon Watch. I had requested a phone call with Mr. Doerr to discuss service.

3. On December 7, 2012, in response to Mr. Doerr's position that Amazon Watch was evading service, I emailed him to indicate that although we disagreed that there was any improper behavior by Amazon Watch, that the reason I wanted to talk to him on the phone was to inform him that Amazon Watch was prepared to accept service as of that day, with a return date two weeks later, on December 21. I stated: "[W]hat I was going to tell you over the phone is that Amazon Watch is prepared to accept service as of today with a response date of December 21." A true and correct copy of this email is attached hereto as Exhibit A.

4. On that same day, I spoke with Mr. Doerr over the phone. He indicated that Chevron agreed that Amazon Watch would accept service as of December 7 with a return date of December 21. I followed up with an email stating: "I'm writing to confirm our conversation earlier today, in which Amazon Watch agreed to accept service of Chevron's subpoena, and you agreed that the response and objections date would be December 21." A true and correct copy of this email is attached hereto as Exhibit B.

5. Shortly thereafter, Mr. Doerr responded to my email, stating in relevant part:

"Confirmed. Thank you for agreeing to accept service on behalf of Amazon Watch." A true and correct copy of this email is attached hereto as Exhibit C.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Signed this 17th day of January, 2013, in Washington, the District of Columbia.

A handwritten signature in black ink, reading "Marco Simons". The signature is written in a cursive style with a horizontal line underneath it.

Marco Simons

EXHIBIT A

Marco Simons <marco@earthrights.org>

Fri, Dec 7, 2012 at 11:48 AM

To: "Doerr, Mark T." <MDoerr@gibsondunn.com>

Cc: Michelle Harrison <michelle@earthrights.org>, Marissa Vahising <marissa@earthrights.org>, Rick Herz <rick@earthrights.org>, "Monagas, Enrique A." <EMonagas@gibsondunn.com>, Jonathan Kaufman <jonathan@earthrights.org>

Dear Mark,

As I mentioned, I'd like to talk over the phone about this. My understanding is that Amazon Watch is not attempting to evade service but it is true that their officers do not regularly work out of their San Francisco office; they are in the process of replacing Mr. Cavanagh as registered agent but he's out of the country at the moment in any event.

As I'm sure you know California law has various procedures that can be employed in such a situation, but what I was going to tell you over the phone is that Amazon Watch is prepared to accept service as of today with a response date of December 21. We don't have any interest in wasting resources on service of process fights.

Sincerely,

Marco

[Quoted text hidden]

[Quoted text hidden]

Doerr, Mark T. <MDoerr@gibsondunn.com>

Fri, Dec 7, 2012 at 11:50 AM

To: Marco Simons <marco@earthrights.org>

Cc: Michelle Harrison <michelle@earthrights.org>, Marissa Vahising <marissa@earthrights.org>, Rick Herz <rick@earthrights.org>, "Monagas, Enrique A." <EMonagas@gibsondunn.com>, Jonathan Kaufman <jonathan@earthrights.org>

Thank you, Marco. I will call you shortly.

Mark

EXHIBIT B

Marco Simons <marco@earthrights.org>

Fri, Dec 7, 2012 at 4:32 PM

To: "Doerr, Mark T." <MDoerr@gibsondunn.com>

Cc: Michelle Harrison <michelle@earthrights.org>, Jonathan Kaufman <jonathan@earthrights.org>, Rick Herz <rick@earthrights.org>, Marissa Vahlsing <marissa@earthrights.org>

Dear Mark,

I'm writing to confirm our conversation earlier today, in which Amazon Watch agreed to accept service of Chevron's subpoena, and you agreed that the response and objections date would be December 21.

Although we do not represent Rainforest Action Network at the moment, I also inquired as to whether you would agree to the same schedule for RAN if they accepted service as well, and you indicated that you would run this up the chain.

Sincerely,

Marco Simons

Marco Simons

Legal Director, EarthRights International

1612 K Street NW #401

Washington, DC 20006

202-466-5188 x103

marco@earthrights.org

EXHIBIT C

Doerr, Mark T. <MDoerr@gibsondunn.com>

Fri, Dec 7, 2012 at 5:16 PM

To: Marco Simons <marco@earthrights.org>

Cc: Michelle Hamison <michelle@earthrights.org>, Jonathan Kaufman <jonathan@earthrights.org>, Rick Herz <rick@earthrights.org>, Marissa Vahlsing <marissa@earthrights.org>, "Monagas, Enrique A." <EMonagas@gibsondunn.com>

Marco,

Confirmed. Thank you for agreeing to accept service on behalf of Amazon Watch.

In the event you are retained by RAN, we agree to the same schedule should you agree to accept service on their behalf.

As a courtesy, I attach a copy of the subpoena served upon both Ms. Salazar and Mr. Paz y Mino. Please confirm receipt.

Kind regards,

Mark

[Quoted text hidden]

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
